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 In the Matter of the Petition of :
 :
 WAUKESHA PROFESSIONAL POLICEMEN'S :
 ASSOCIATION :
 :
 For Final and Binding Arbitration :
 Involving Law Enforcement Personnel :
 in the Employ of the :
 :
 CITY OF WAUKESHA :
 :

Case XVII
 No. 15623 MIA-6
Decision No. 11012-A

Appearances:

Mr. William C. Lawler, City Attorney, for the City.
Hippenmeyer, Reilly and Arenz, Attorneys at Law, by Mr. William E. Reilly, for the Association.

FINAL AND BINDING ARBITRATION AWARD

On September 8, 1972, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator pursuant to Section 111.77(4)(b), Wisconsin Statutes, to make a final and binding determination of an impasse existing between City of Waukesha, Wisconsin, hereinafter referred to as the City, and Waukesha Professional Policemen's Association, hereinafter referred to as the Association. Said statute requires the arbitrator to "select the final offer of one of the parties . . . without modification."

A hearing was held on October 16, 1972, at Waukesha, Wisconsin. At the hearing both parties were given full opportunity to offer testimony and make arguments. No transcript of the proceedings was made. Both parties agreed to file post-hearing briefs and rebuttal briefs. The record was completed with receipt of the last brief on November 17, 1972.

The City made no change in its final offer after the appointment of the arbitrator. By letter to the arbitrator dated September 27, 1972, the Union modified its position by dropping requests for changes in the labor agreement in the areas of vacations, seniority, dental insurance and holidays.

At the hearing the parties agreed that one issue remained unresolved, namely, the work schedule. The Association seeks to change the present work schedule. The City wishes to retain the existing schedule.

FACTS:

The Association is the bargaining agent for a unit of 72 individuals: 9 sergeants, 8 detectives, 53 patrolmen and 2 dispatchers. At present they work a 5-2/4-2 schedule, i.e. five days on duty, followed by two days off, four on and two off. Over the course of a year this schedule averages 40.1 hours of work per week. The Association seeks a change to a 5-2/5-3 schedule. This schedule would average 38.6 hours of work per week. However, the Association proposes not to reduce the work week. Instead, it wishes the City to consider the work week as 40 hours including 1.4 hours average per week as "preparation time." The existing schedule includes no paid preparation time.

The current 5-2/4-2 schedule is identical to the schedule worked by a large number of other police and sheriff departments in the Waukesha area. An exhibit presented by the City demonstrates that each of 20 police forces in the Waukesha-Milwaukee area works a 5-2/4-2 schedule. Fifteen of these police forces are included in the list of twenty forces used by the Association for economic comparisons. The Association asserts that two cities in the area, Racine and Fox Point, have shifts of 5-2/5-3 or better, but no evidence was submitted on this point.

The 1972 negotiations of the parties were affected by the wage freeze in August 1972, and the subsequent wage controls. The City offered a 5.5 percent increase for 1972, i.e. an increase of 5.5 percent above the cost of the wages and fringe benefits paid to the bargaining unit in 1971. As a consequence, the City included in the 5.5 percent total a pension pick-up by the City negotiated in 1971 to be effective in 1972. The Association does not agree with the City that the 1971-negotiated pension pick-up should be calculated as part of 1972 benefits. That fact notwithstanding, the Association agreed to the monetary package offered by the City and sought to arbitrate the work schedule question.

The parties agree that one effect of making the requested schedule change would be a reduction in the work force of 584 man-days per year. Additional effects of the change are a matter of speculation.

The Association claims that the change can be handled smoothly and at no added cost to the City. The result would be to reduce the size of shifts on approximately 4 days per month. The reduced shifts on these days would then be the same size as the shifts on the other days. In other words, according to the Association, shifts would operate 100 percent of the time with the size shifts which have heretofore been in effect approximately 86 percent of the time.

The police chief's testimony on the effects of the requested change is less certain. He stresses that he honestly does not know what the effect of the change would be. While indicating both that he does not object to the change and that the police force should be better compensated in light of its heavy and ever-increasing duties, he indicates that the change could affect the number of vehicles operating, the number of men assigned per squad car and the number of operating radar units and might also result in increased overtime payments. In response to a question from the City Attorney asking if the quality of services would be adversely affected, the chief indicated that was a possibility although he was not certain of what the effects of the change would actually be.

The last work schedule change occurred in 1969. Both parties agree that the transition from the former schedule (6-2/6-2/6-2/6-3/5-3) was made smoothly.

Both parties agree also that the size of the population served by the police force has increased markedly in recent years and that there has been expansion as well in the geographic area served. Since 1969 there has not been any increase in the size of the police force. The chief has been unsuccessful in securing additional staffing from the City Council despite repeated requests for such increases. In fact, since 1971, the chief has not been granted the necessary authorization to fill a position made vacant by the departure of a patrolman.

In addition to the above facts, the Association presented exhibits as well as testimony by an expert witness illustrating the high cost of living in the Waukesha area and the low ranking of salaries paid to the City's police force in comparison to other communities in the area.

POSITIONS OF THE PARTIES:

The positions of the parties may be summarized as follows:

Association:

(1) The Association contends that the schedule change will involve no added cost to the City. While each man will have more time off each year, the daily schedule will be manned very similarly to current schedules. The present schedule will show a reduction only in 4 days each month and the manning on those days will be the same as on the other days. In addition, each man will work the same number of hours under the new schedule, the only difference being that a portion of the work week will be time spent in preparation of uniforms and related equipment which was formally done on non-work hours.

(2) In justifying its claim for paid preparation time, the Association contends that paid preparation time is a common phenomenon in industry and occurs in some units of government as well.

(3) The Association contends that the ever-increasing pressures of a policeman's job justify additional time off. So important is this to the men, the Association argues, they are willing to seek a schedule change rather than additional compensation in this proceeding. Currently the same number of men on the force cover a growing geographic area and a growing population. In the Association's view, this has contributed to job tensions at the same time that the City has been unwilling to expand the police force or even fill vacancies.

(4) The Association contends that the change in schedule is justified also by the economic position of the police force in comparison with comparable area police forces. An Association exhibit indicates that 19 of the 20 police forces surveyed have higher salaries while one has the same salary as the City's police force. An analysis of the other economic benefits indicates the City is behind in many other areas. The Association contends that the City did little to improve the economic picture in 1972 by insisting that the 1971 negotiated pension pick-up be counted as part of the 1972 package.

Based on these contentions, the Association asks the arbitrator to support its requested schedule change.

City:

(1) The City contends that the Association's request should be considered an economic benefit since it is really a reduction in hours without a reduction in pay. The City cites Pay Board regulations requiring calculation of hours reductions without loss in pay to be included in calculations of the allowable percentage increase in wages and benefits. The City thus defends its economic offer as being 5.5 percent, the amount allowed by the Pay Board. Similarly, the City contends, it followed Pay Board rules when it included as part of 1972 compensation, the pension pick-up agreed upon in 1971 negotiations to be effective in 1972.

(2) The City is concerned about the effects of the proposed schedule change on the available manpower and quality of police services the City can offer. In addition, the City contends, its exhibit on comparable work schedules shows that the schedule sought by the Association is not in effect in any comparable area community, and, in fact, the schedules for each of those police forces is identical to the one now in effect in the City.

(3) Finally, the City contends, changes in work schedules should be negotiated between the parties and should not be left to an arbitrator to decide.

Based on these contentions the City asks the arbitrator to support its position and retain the present work schedule.

DISCUSSION:

The sole issue before the arbitrator is a determination of whether the work schedule should be changed from 5-2/4-2 to 5-2/5-3. On the basis of the following discussion the arbitrator has concluded that the present 5-2/4-2 schedule should be retained.

The City's exhibit of comparable police forces demonstrates that each of the forces works a schedule identical to the schedule in effect in the City. The arbitrator believes that work schedules should generally be negotiated by the parties and not set by an arbitrator unless there is a clear showing that the schedule in question is markedly poorer than other schedules in effect in comparable situations or is offensive to the standard work schedules in effect in the community.

Maintenance of the present schedule does not leave the Association in a disadvantaged position in comparison to other area police forces used for comparison purposes. To the contrary, support of the Association's request would put the Association in an advantaged position and would be a pattern-setting award in the Waukesha-Milwaukee area. Also, with respect to the general community's work schedules, no evidence was submitted which provides compelling reasons to support a change in a work schedule which now provides an average 40 hour week and 4 days off in every 13 day period.

A second factor in the decision is that the schedule change requested would create a new benefit, paid preparation time. The arbitrator is reluctant to support such a request where there is no showing that preparation time is common in police work generally or in the police forces used for comparison purposes. The Association presented some scanty evidence that paid preparation time exists in industry and some units of government.

The arbitrator is aware that paid preparation time is paid in certain industrial and governmental situations generally as a result of a negotiated labor agreement or because the nature of the work is such that the employer has realized it to be unreasonable to expect employees to prepare on their own time. While the arbitrator makes no judgment here about the reasonableness of paid preparation time in police work, the Association has not made a persuasive argument that such pay should be given at this time.

The Association has succeeded in demonstrating to the arbitrator that the bargaining unit is behind in salary and some other economic benefits when compared to the other police forces used in its exhibits as standards of comparison. However, the issue before the arbitrator

is not whether the City should raise the compensation of its police, but rather whether the work schedule should be changed.* While a reduced work schedule is one means of effectuating an increase in compensation, a change in work schedule produces other problems, as outlined in the contentions of the City, as the chief indicates may result although he is not certain at this time and as the arbitrator has indicated in the discussion to this point.

In conclusion, the arbitrator has not found the position taken by either party to be unreasonable. The Association has made strong arguments both for increased compensation and increased manpower. However reasonable those arguments may be, it is the arbitrator's view that the Association has not justified its position that the work schedule should be changed, and thus the City's position is supported here.

In making his decision the arbitrator has considered the factors enumerated in Section 111.77 (6) (a-h) and based on the above facts and discussion the arbitrator makes the following

AWARD

The request of the Association to change the work schedule from 5-2/4-2 to 5-2/5-3 is denied.

Dated at Madison, Wisconsin, this 4th day of December, 1972.

By Edward B. Krinsky /s/
Edward B. Krinsky, Arbitrator

* Whether the Association's proposed change is viewed as a reduction in hours to 38.6 per week or as no reduction because of preparation time, the loss in current police work to the City compared to the present situation is a reduction from 40.1 to 38.6 hours per week per person or approximately 4 percent per person. It should be noted that translated into a 4 percent additional salary increase the top patrolman's salary in the City would still rank behind 16 of the 20 police forces used by the Association for comparison purposes. Thus, in strictly economic terms, the Association's request does not seem unreasonable.